



The Government and Rights of the Disabled

**Indiana Close Up
A Jefferson Meeting
on the Indiana Constitution**



Issue Book Number 2



Thank you

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Additional thanks are due the following individuals, organizations, and parts of state government for their help:

Office of the Attorney General
Indiana Council for the Social Studies
Indiana Department of Administration
Indiana Department of Education
Indiana House of Representatives
Indiana Senate
Indiana Supreme Court

with funding from the Close Up Foundation and the Indiana Humanities Council in cooperation with the National Endowment for the Humanities.

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The Jefferson Meeting format requires analysis, critical thinking, public speaking, and cooperative work by participants no matter their level of ability. The Meeting links the Constitution with issues currently in the spotlight and has been called a history lesson with a focus on the present and a civics lesson with historical perspective.

The Jefferson Foundation is located at 1529 18th Street, N.W., Washington, D.C. 20036; telephone 202-234-3688.

Availability

Copies of this publication are available from the Indiana Historical Bureau, 140 North Senate Avenue, Room 408, Indianapolis, Indiana 46204-2296. Call for details: 317-232-2535/TDD 317-232-7763/FAX 317-232-3728.

Disclaimer

This issue essay should be used as an educational aid to encourage discussion and study. It is not a complete revelation of the current law. The legal issues referred to are far more complex than we are able to address in this format.

Action by the government is necessary to guarantee the rights of disabled people.

The Issue

- Constitution of Indiana

Article I, Section 1. WE DECLARE, That all people are created equal; that they are endowed by the CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness (Amended November 6, 1984)

Article I, Section 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.

Article IX, Section 1. (Institutions for education and treatment). It shall be the duty of the General Assembly to provide, by law, for the support of institutions for the education of the deaf, the mute, and the blind; and for the treatment of the insane. (Amended November 6, 1984)

Article IX, Section 3. (County farms). The counties may provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society. (Amended November 6, 1984)

- United States Constitution

Fourteenth Amendment. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Relevant Constitutional References

The U.S. Constitution was ratified in 1787. The first ten amendments, called the Bill of Rights, were ratified in 1791. Most of the original thirteen colonies had bills of rights with their constitutions when they formed the Union. Each new state which entered the Union had a constitution. Indiana's original 1816 constitution included a Bill of Rights of 24 sections in Article I. The 1851 Indiana constitution contains 37 sections in Article I, known as the Bill of Rights, and gives more rights to citizens than the federal Bill of Rights.

The rights enshrined in the U.S. Bill of Rights are considered so fundamental, nearly sacred, that they were spelled out as protections to citizens from encroachment by the federal government. State constitutions likewise protected the rights of citizens from encroachment by state government.

The rights enumerated in the U.S. Bill of Rights are connected by the thread of "natural rights" to Roman times. The concept of "natural rights" assumes that all humans are born with certain rights that cannot be transferred or taken away.

Historical Context

Some of these rights are specified in the Magna Carta in 1215 A.D., the English Bill of Rights in 1689, and the United States Declaration of Independence, Constitution, and Bill of Rights.

Perceptions of society's role in the care of the disabled have evolved over time. Constitutional issues center around the equal protection guarantee of all citizens under the Fourteenth Amendment to the U.S. Constitution, ratified in 1868. That guarantee is mirrored in the Indiana Constitution, Article I, Section 23. Both items are quoted in the preceding section of this essay.

Terminology used to designate disabled people creates problems. Such terms as "impaired," "challenged," "disabled," "disadvantaged," or "handicapped" imply a negative or separateness. Legal definitions of disability add to the confusion. According to *Guide to American Law* (1984), disability is "the lack of competent physical and mental faculties; the absence of legal capability to perform an act . . ." or a condition which "usually signifies an incapacity to exercise all the legal rights ordinarily possessed by an average person . . . or . . . the impairment of earning capacity; the loss of physical functioning resulting in diminished efficiency; the inability to work."

A more current definition—in the Americans with Disabilities Act of 1990—states,

The term "disability" means, with respect to an individual-

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

Historically, persons with disabilities received varying treatment. In colonial times, town governments paid local townspeople to care for those who could not work or provide for themselves. Churches and benevolent societies also aided the poor, which often included the disabled and the ill.

In Indiana, the 1816 Constitution gave county commissioners authority to purchase land and build asylums for the poor, so "that such persons may therein, find employment, and every reasonable comfort and lose, by their usefulness, the degrading sense of dependence." If no "poor farm," was established, commissioners let contracts to individuals, paying them to care for the poor and disabled. The State of Indiana assumed no responsibility for dependent children. Children who were able to work were bound out as apprentices to individuals; disabled children were often cared for at the county asylum for the poor.

State institutional support for the disabled began in the 1840s when schools for both the deaf and the blind were established in Indianapolis. The founding of such institutions in the mid-nineteenth century was part of a recognition of broader social responsibility for disadvantaged citizens.

The balance of state and federal power has been a very delicate one in dealing with citizen rights and the rights of the disabled. The federal Americans with Disabilities Act of 1990 (Public Law 101-336) specifically addressed accessibility in accommodations, telecommuni-

cations, and public transportation. This act was the culmination of a series of measures over the years dealing with education, rehabilitation, and other due process and equality issues. Many of these issues had originated as civil rights issues in various states where the rights of the disabled in gaining equal access in society were in question.

Several key federal statutes preceded ADA :

- Education for All Handicapped Children Act (1975)
amended in 1990 to Individuals with Disabilities Education Act (IDEA)—20 *United States Code*, sections 1400-1485 (1992);
- Developmentally Disabled Assistance and Bill of Rights Act (1975)—42 *USC*, sections 6001-6081 (1976);
- Civil Rights Act of 1964.

Yes, action by the government is necessary to guarantee the rights of disabled people.

1. Equality is a constitutional right and a social responsibility. All citizens should have equal access.

The Fourteenth Amendment of the U.S. Constitution, clearly states that every citizen has a right to “equal protection of the laws.” Research on the special difficulties faced by the disabled, however, demonstrates a pervasive, yet often subtle, discrimination in society.

The Americans with Disabilities Act of 1990 (ADA) includes some important facts in section 2 (a) Findings:

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

.....
(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) . . . individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities; . . .

2. If citizens rights are being denied, and the states do not provide remedies, it is the responsibility of the federal government to guarantee those rights.

The federal government is the only entity with enough power to address broad and pervasive discrimination issues. The federal government is empowered to act on behalf of citizens by the U.S. Constitution: the “supremacy” clause (Article VI), the “due process”

**The Arguments
Pro and Con**

**Some
Pro
Positions**

clause (the Fourteenth Amendment), and the “commerce” clause (Article I, Section 8). In most cases, disagreement between state and federal law is resolved in favor of federal law.

3. In maximizing the potential of every citizen, the state and nation will benefit economically. The gross national product will increase as all citizens become contributing members of society.

The ADA Findings in Section 2 (a) noted that,

(6) census data, national polls and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically and educationally;

.....
(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Research presented in 1989 to the House Subcommittee on Select Education and Employment Opportunities showed that “. . . 2/3 of all disabled 16-64 years of age are not working” and “. . . 40% of all adults with disabilities did not finish high school. (This is three times more than for the non-disabled.)”

Some Con Positions

No, action by the government is not necessary to guarantee the rights of disabled people.

1. Disabilities are an individual problem, not the responsibility of the government. Public monies should not support individual problems.

The disabled person is not the state's responsibility. Each person should make his or her own way and not look to the state as caretaker or provider. Private or church charities exist if a person is truly in need of help.

2. Compliance with the Americans with Disabilities Act is costly and inconvenient. It is often difficult for small businesses to comply. The government should stay out of the economy and let the forces of the free market work.

Government should not interfere in the conduct of business. Too many rules and regulations already abound. The Americans with Disabilities Act creates more economic hardships for businesses. New building construction must meet specific architectural codes to guarantee disabled access. Major renovations will be required in many establishments to bring about compliance. Who will absorb these costs? Some small businesses will face economic hardship in trying to comply.

Even though the Americans with Disabilities Act allows “reasonable accommodation,” there will be expensive court cases to determine what is a “reasonable” expectation and what is a “good faith” effort.

Businesses are already overloaded with too many rules and regulations, driving up the cost of doing business. The Americans with Disabilities Act is only one more example of the government’s intrusion into free enterprise, to the detriment of the whole of society, in order to benefit a small minority of people.

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- Americans with Disabilities Act. Public Law 101-336. *United States Code*. Vol. 42, sec. 12101-2 (1990).
 - Congress, House. Subcommittee on Select Education and Employment Opportunities. *Americans With Disabilities: Hearings before the Subcommittee on Select Education and Employment Opportunities*. 101st Cong., 2nd sess., 18 July 1989.
 - Congress, Senate. Subcommittee on the Handicapped. *Americans With Disabilities: Hearings before the Subcommittee on the Handicapped*. 100th Cong., 2nd sess., 28 April 1987.
 - Constitution of Indiana, *Indiana Code*, Vol. 1, pp. 1-31 (Indianapolis, 1988).
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 - *Guide to American Law: Everyone’s Legal Encyclopedia*, 1984 ed., s.v. “Disability.”
 - Thornbrough, Emma Lou. *Indiana in the Civil War Era, 1850-1880*. (Indianapolis: Indiana Historical Bureau and Indiana Historical Society, 1965), 576-83.
 - *Worklife: A Publication on Employment and People with Disabilities*, Vol. 3, No. 3 (Fall 1990).

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- *Dixon and Gunden et al v. Stanton*, 466 F. Supp. 335 (D. C. Ind. 1979).

Class action against the Indiana Department of Public Welfare regarding payment of Medicaid benefits to developmentally disabled in group homes. Found that residents were eligible for benefits.

- *Ackerman for the Commitment of Hartman*, 409 N.E. 2d 1211 (Ind. App. 1980).

Affirmed that the treatment given to Hartman did not meet the requirements of federal law and ordered the state to implement a proper treatment plan. The judgment indicated that “there is now a substantial body of federal case law which recognizes a constitutional right to treatment for both mentally ill and retarded individuals who are involuntarily committed by the states.” It concluded that “the expenditure of State funds would clearly not be justification for withholding appropriate treatment from an individual”

- *Evans et al. v. Evans et al.*, 818 F. Supp. 1215 (D. C. Ind. 1993).

Ruled that the Indiana Department of Education procedures, which delayed implementing individualized educational programs for disabled students, violated federal law. Invoked the supremacy

Some Relevant Court Cases

clause of the U.S. Constitution, Article VI, invalidating the state procedure, which was in conflict with the Individuals with Disabilities Education Act.

What Do You Think?

1. How many disabled are there in your county, your city, your school? What special barriers do the disabled encounter? How are these barriers being addressed under the Americans With Disabilities Act? What particular agencies exist in your area to serve the disabled?
 2. Have you or any of your classmates ever experienced a temporary disability (broken leg or wheelchair bound from an injury)? Discuss what problems of mobility or access were encountered during that time.
 3. How many disabled are there in Indiana? What special initiatives does the state have to deal with the needs of the disabled?
 4. Is your school handicapped accessible? Conduct a review of school facilities to assess compliance.
 5. Is your home accessible? What modifications would need to be made in order to make your home accessible?
 6. How have area businesses complied with the Americans With Disabilities Act? Conduct a survey of area businesses to assess compliance and opinions regarding the appropriateness of the law.
 7. Do you believe the government should require businesses to be accessible to the handicapped? Why or why not?
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Continuing to Explore

1. Explore definitions of disability. Could the definition be changed to have a positive effect on perceptions of disabled people? How?
 2. How might the needs of Indiana's disabled population differ from those in other regions of the country (specifically with regard to differences in climate and urban or rural character)?
 3. What obligations does society have to the disabled? When do those responsibilities end? Why? What, historically and philosophically, is the basis for those obligations?
 4. What should be the limits of the government in enforcing the Americans With Disabilities Act? What is "reasonable compliance"?
 5. How should any resulting economic costs for compliance be dealt with—for example, should there be higher prices to consumers for goods and services, government tax credits or reimbursements, or other ways?
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For More Information

- "A Troubling Bill For Business," *Nation's Business*, May 1990, pp. 58-59.
 - "Deafness as Culture," *The Atlantic Monthly*, September 1993, pp. 37-53.
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 - Meltzer, Milton. *The Bill of Rights—How We Got It and What It Means*. New York: Thomas Y. Crowell, 1990.
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